

DAVID L. & CONNIE L. EASTER
10083 POPLAR POINT ROAD
ATHENS, AL 35611,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 05-282

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed David L. and Connie L. Easter (together “Taxpayers”) for 2002 and 2003 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on April 26, 2005. David Easter (individually “Taxpayer”) represented the Taxpayers. Assistant Counsel Glen Powers represented the Department.

The Taxpayers filed 2002 and 2003 Alabama income tax returns, but failed to pay the reported tax due. The Department consequently assessed the Taxpayers for the tax due, plus penalties and interest. The Taxpayers appealed concerning the penalties and interest.

The Taxpayer testified that he and his wife had always timely filed their federal and Alabama income tax returns before 2000. He learned in 1999 or 2000 that several of his co-workers were filing “tax statements” with the IRS and the Revenue Department in lieu of tax returns. He subsequently purchased a Tax Statement Package from HTS Financial Freedom in early 2001. The Taxpayer explained as follows in a written statement submitted at the April 26 hearing – “Part of our decision to purchase the statement package was the IRS Privacy Act Notice stating ‘you must file a return or statement with us’ and it looked like it must be true due to seeing others following the same process.”

IRS agents contacted the Taxpayers several times in 2002 and 2003 and inquired concerning the business that had sold them the Tax Statement Package. The Taxpayer testified that he asked the IRS agents if it was proper to file a tax statement in lieu of a return, and the agents never responded. However, after being contacted several more times by the IRS and discussing the matter with the Revenue Department, the Taxpayers decided to file returns for the subject years in July 2004. As indicated, the Department assessed the Taxpayers for the tax due as reported on those returns, plus applicable penalties and interest.

The Taxpayers do not dispute the tax due, but would like the penalties and interest waived. However, interest is required by statute, Code of Ala. 1975, §40-1-44, and cannot be waived absent unreasonable delay by the Department. That did not occur in this case.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Reasonable cause includes the good faith reliance on a competent tax advisor. Rev. Proc. 97-003. The Taxpayers in this case got bad advice concerning the filing of the tax statements in lieu of returns. However, the Taxpayers believed in good faith that filing the tax statements was legal. That belief, in addition to the fact that the Taxpayers had always correctly filed before 2000 and are now cooperating with the Department, constitutes reasonable cause to waive the penalties. The Taxpayers are on notice that they must hereafter timely file their returns and pay the tax due.

The final assessments, less the penalties, are affirmed. Judgment is entered against the Taxpayers for 2002 tax and interest of \$867.35, and 2003 tax and interest of \$342.55. Additional interest is also due from the date of entry of the final assessments, January 13, 2005.

This Final Order may be appealed to circuit court within 30 days from the date of this Order pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 28, 2005.

BILL THOMPSON
Chief Administrative Law Judge